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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,690	12/04/2003	Senya Yamanaka	2003_1750A	5656
513	7590	05/10/2006	EXAMINER	
WENDEROTH, LIND & PONACK, L.L.P.			STULII, VERA	
2033 K STREET N. W.			ART UNIT	
SUITE 800			PAPER NUMBER	
WASHINGTON, DC 20006-1021			1761	

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/726,690	Applicant(s) YAMANAKA, SENYA	
	Examiner Vera Stulii	Art Unit 1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 through 6 are rejected under 35 USC 112, first paragraph, as being based on a non-enabling disclosure. The specifications and claims are not clear as to the specific steps and their relationships to each other. For example, it is not clear when water is added to the process. Is the water added to the rice before germination, or after germination, or both before and after? Also, it is not clear how the applicant is using term "Koji"? It appears that koji can refer to the mold as well as to the rice fermented by the mold. The claims and specifications are also difficult to follow, because of improper English usage. Clarification and/or correction are requested. Applicant is cautioned against the addition of new matter.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 through 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over **coldmountainmiso.com** (hereinafter referred to as CMM) in view of

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**southernrivermiso.com**, *North American New Product Report*, **grainnaissance.com**, and **users.chariot.net.au**.

In regard to claim 1, and as best as can be understood from the claim language, CMM discloses a method of making Amazake comprising koji made by germinated brown rice, which has undergone a temperature and time process within the range recited, to produce sugar from the germinated brown rice. CMM also discloses crushing or shaking the Amazake, since CMM discloses the use of a blender. CMM also places the Amazake into containers. Claim 1 recites that Amazake is placed "into desired sealing container members". It is noted that this does not positively recite that the container members are sealed. In any case, *North American New Product Report* discloses an Amazake beverage that is marketed in plastic bottles, which would of necessity have to be sealed. To modify CMM and seal the Amazake product in a sealable container member would have been obvious for its art recognized and applicant's intended function. Finally in regard to claim 1, it is not clear at what stage of the process water is added. However, CMM does add water in the Amazake process and the particular point of addition of the water in the process, if not already taught by CMM, would have been an obvious result effective variable. Applicant's admission of prior art and **southernrivermiso.com**, **grainnaissance.com**, and **users.chariot.net.au** are further evidence of the conventionality of Amazake.

In regard to claim 2 which discloses mixing Amazake made by the brown rice and polished rice, since the art taken as a whole teaches making Amazake from either polished or brown rice (for example CMM), it would have been obvious to combine the

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two to take advantage of the conventionally known properties of each of them. For example, it is known that polished rice has a better taste, whereas brown rice inherently has more nutrient value.

In regard to claims 3 through 6, which recite removing some of the outer part of the rice, what part of the rice one chooses to retain assuming one does not want to retain the entire rice particle, is seen to have been an obvious matter of choice and an obvious result effective variable.

The remainder of the references cited on the 892 forms are cited as pertinent art.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VS

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
5/9/06